

In the Matter of Merchant Mariner's Document No. Z-122664-D4 and All Other Seaman Documents

Issued to: WILLIAM MUNRO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1132

WILLIAM MINRO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 16 February 1959, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The four specifications found proved allege that while serving as an oiler on the United States SS PIONEER GLEN under authority of the document above described, on or about 26 July 1958, Appellant wrongfully failed to stand his watch due to intoxication; on 30 July 1958, he wrongfully had intoxicating liquor in his possession; on 23 August 1958, he failed to join the ship; and on 27 August 1958, Appellant deserted the ship.

At the hearing, Appellant was represented by counsel and he entered pleas of not guilty to the charge and specifications.

After considering the evidence, the Examiner rendered the decision in which he concluded that the charge and four specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of three months outright plus nine months on twelve months' probation.

FINDING OF FACT

Between 26 July and 27 August 1958, Appellant was serving on the United States SS PIONEER GLEN and acting under authority of his Merchant Mariner's Document No. Z-122664-D4 while the ship was on a foreign voyage. Appellant was serving as an oiler during this time except for the last few days when he was a wiper after having been demoted as indicated below.

On 26 July 1958 while the ship was at Sydney, Australia, Appellant went to the engine room to stand his 0000 to 0400 watch in an intoxicated condition. Appellant was ordered to leave the engine room because he was intoxicated. He did not complete his watch.

On 30 July 1958, Appellant had seven bottles of beer and a bottle of brandy in his possession on the ship. This was in

violation of the Shipping Articles, a regulation of the shipowner and an order of the Master prohibiting crew members to have intoxicating liquor on board.

On 23 August 1958 while the ship was at Sydney, Appellant was assigned the 1200 to 1600 watch but he was not in the engine room at 1300. About 1315, the First Assistant Engineer saw Appellant in his room packing his gear in a suitcase. When ordered to go to the engine room, Appellant refused to do this saying that he would not stand watches with the Third Assistant Engineer who was a Negro. Appellant added that he was leaving the ship. He did so prior to her departure between 1500 and 1600. A wiper was promoted to oiler and placed on Appellant's watch. Appellant was demoted to a wiper who does day work without standing regular watches.

Appellant rejoined the ship at Brisbane, Australia on 25 or 26 August 1958 when he was brought on board by two Customs officers. About 1300 on 26 August, the First Assistant told Appellant that he had been demoted. Appellant wanted to argue about this but the First Assistant told him to see the Chief Engineer. At sometime in the afternoon, Appellant left the ship with all his belongings except some underwear, two pairs of pants, a pair of shoes, shaving gear, an imitation kangaroo, and a few small items. Appellant was not on board when the ship sailed the next morning for Panama. He did not rejoin the ship prior to the completion of the voyage at New York in October 1958. Appellant returned to the United States as a workaway on another ship.

Appellant's prior record consists of a probationary suspension in 1954 for desertion.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that there is a lack of credible evidence because the Government's two witnesses were prejudiced and contradicted each other as to substantial facts.

The Examiner stated that he relied on the testimony of these two witnesses including the Chief Engineer's statement that on 26 or 27 August, Appellant said he would leave the ship rather than stand watches with the Third Assistant Engineer. Since Appellant was demoted to a wiper prior to 27 August, he was required to work from 0800 to 1700 each day rather than to stand regular assigned watches. Therefore, the Examiner relied on the erroneous testimony of the Chief Engineer in concluding that Appellant was guilty of desertion.

In conclusion, it is respectfully submitted that the four specifications should be dismissed for the above reasons. Alternatively, the suspension should commence on 29 October 1958, the date when the Government first requested an adjournment, because the hearing extended over a period of almost four months due largely to adjournments requested by the Investigating Officer.

APPEARANCE: Sheldon Tabak, Esquire, of New York City, of Counsel.

OPINION

I agree with the Examiner's conclusions that there is substantial evidence to support the four specifications. After observing the Chief Engineer and the First Assistant, who appeared as witnesses for the Investigating Officer, as well as Appellant when he testified, the Examiner stated that he was favorably impressed by the testimony of the two engineering officers but not by that of the Appellant. The officers' testimony is substantially in agreement and it is corroborated by entries in the ship's Official Logbook.

No detailed objections have been raised on appeal with respect to any of the specifications except the one alleging desertion on 27 August. The Examiner found that Appellant had the required intention of not returning to his ship on 23 August as well as 27 August although he was only charged with failure to join on 23 August. The Examiner rejected Appellant's denial, of intent to desert, especially because Appellant testified that on both occasions, he simply went ashore to sleep with the intention of returning on board prior to departure. I agree with the Examiner that it is unlikely Appellant would have gone to a hotel a second time, after having missed the ship the first time in the same way, unless he intended to desert the ship. Also, Appellant's statement on 23 August, that he was leaving the ship, is indicative of his frame of mind three or four days later after he was returned to the ship by Customs Officials.

Appellant contends that the Examiner's reliance on the testimony of the Chief Engineer was misplaced because his testimony about Appellant refusing, on 26 or 27 August, to stand regular watches with the Third Assistant referred to a time when Appellant was on day work as a wiper and did not have to stand watches. Appellant points out that such a refusal by him could only reasonably have occurred on 23 August before he was demoted.

I do not think that this error is fatal to the proof of the specification alleging desertion. It has been found that Appellant made these statements on 23 August and, as stated above, the events of this date have some relevance in determining Appellant's state of mind with respect to an intent to desert on 26 or 27 August. In any event, it is my opinion that there is ample evidence to support the conclusion that Appellant had formulated the necessary intent to desert the ship by the time she departed Brisbane on the next morning for Panama. Presumably, Appellant knew the ship's destination and that he would not have another opportunity to rejoin her. The clothing he left on the ship does not preclude this conclusion which is further supported by Appellant's prior record of desertion in 1954.

Appellant's request that the suspension commence as of 29 October 1958, when the Government requested an adjournment is not granted because Appellant's document was returned to him by the Examiner on this date.

ORDER

The order of the Examiner dated at New York, New York, on 16 February 1959, is ~~ORDERED~~ **AFIRMED**.

A.C. Richmond

Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 28th day of January, 1960.